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2018 FEB 14 PM 1:54
DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

Attorneys for Intervenor
SCHNITZER STEEL HAWAII CORP.

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

For a New Special Use Permit To Supersede
Existing Special Use Permit To Allow A 92-5-
Acre Expansion And Time Extension For
Waimanalo Gulch Sanitary Landfill,
Waimanalo Gulch, O'ahu, Hawai'i, Tax Map
Key: 9-2-03: 72 And 73,

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special Use
Permit No. 2008/SUP-2 (also referred to as
Land Use Commission Docket No. SP09-403)
which states as follows:

“14. Municipal solid waste shall be allowed at
the WGSL up to July 21, 2012, provided that
only ash and residue from H-POWER shall be
allowed at the WGSL after July 31, 2012.”

FILE NO. 2008/SUP-2
LUC DOCKET NO. SP09-403

INTERVENOR SCHNITZER STEEL
HAWAII CORP.'S MEMORANDUM IN
OPPOSITION TO KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S MOTION TO
STRIKE SCHNITZER'S FEBRUARY 2018
PROPOSED FINDINGS; CERTIFICATE
OF SERVICE

**INTERVENOR SCHNITZER STEEL HAWAII CORP.'S MEMORANDUM IN
OPPOSITION TO KO OLINA COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S MOTION TO STRIKE SCHNITZER'S
FEBRUARY 2018 PROPOSED FINDINGS**

COMES NOW Intervenor Schnitzer Steel Hawaii Corp. ("Schnitzer"), by and through the undersigned attorneys, and hereby submits this Memorandum in Opposition to the *Motion to Strike Schnitzer's February 2018 Proposed Findings*, filed February 13, 2018 ("Motion") by Ko Olina Community Association and Maile Shimabukuro (collectively, "KOCA"), pursuant to the Rules of the Planning Commission, City and County of Honolulu § 2-67. For the reasons set forth below, the Motion should be denied.

On December 6, 2017, pursuant to the Rules of Planning Commission, City and County of Honolulu § 2-75, the Planning Commission issued its proposed Findings of Fact, Conclusion of Law, Decision and Order and instructed the parties to submit their written exceptions by February 5, 2018. To that end, Schnitzer timely filed its *Exceptions to the Planning Commission's Proposed Findings of Fact, Conclusions of Law and Decision and Order* ("Exceptions"). In its Exceptions, Schnitzer objected to the Planning Commission's continued omission of the 2008 Application record, noting that although the instant proceeding is meant to address and resolve both the 2008 Application and the 2011 Application, the Planning Commission did not integrate the 2009 Planning Commission Decision in its 2017 Proposed Planning Commission Decision. Exceptions at 5. To aid the Planning Commission, Schnitzer attached as Exhibit 1, a Findings of Fact, Conclusions of Law, Decision and Order that combined the 2009 Planning Commission Decision and 2017 Proposed Planning Commission Decision.

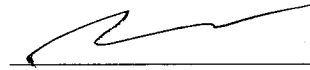
Contrary to KOCA's mischaracterization of Schnitzer's Exhibit, Schnitzer did not submit its own proposed findings of fact for the Planning Commission to consider. Exhibit 1 is not a resubmittal of Schnitzer's Proposed Findings of Fact, Conclusions of Law, Decision and Order

that was submitted on January 27, 2017, nor is it “a new set of proposed findings.” Motion at 3. Rather, Exhibit 1 is the combination of the Planning Commission’s *own* findings of fact contained in its August 5, 2009 Findings of Fact, Conclusions of Law, and Decision and Order and the instant December 6, 2017 proposed Findings of Fact, Conclusions of Law, and Decision and Order. Exhibit 1 was attached in order to demonstrate the extent of the Planning Commission’s oversight in not making any findings based upon the 2008 Application proceeding. This omission was carried over from the Planning Commission’s April 2017 decision, which, as KOCA noted in its *Motion to Deny and Remand*, did “not make any findings, conclusions or decision on the 2008 Application.” Motion to Deny and Remand at 4.

As stated in its Exceptions, Schnitzer is concerned that the Planning Commission’s blanket order that the 2009 LUC Order, which adopted the 2009 Planning Commission Decision, “is incorporated by reference” and “any inconsistent finding, conclusion, or condition” is superseded, is insufficient. 2017 Proposed Planning Commission Decision at 39. Exhibit 1 was attached to illustrate the vast difference between merely stating that findings and conclusions are incorporated and issuing a single decision which addresses and resolves both the 2008 and 2011 Application proceedings.

KOCA has not demonstrated that the Exceptions or Exhibit 1 attached thereto is untimely, nor has it shown that they warrant being stricken for any other reason. As such, the Motion should be denied.

DATED: Honolulu, Hawaii, February 14, 2018.



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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served
upon the parties identified below by hand delivery on the date set forth below:

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DATED: Honolulu, Hawaii, February 14, 2018.



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